

The Honorable John C. Coughenour
United States District Court Judge
The Honorable Mary Alice Theiler
United States Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY WHEELER,)
)
 Plaintiff,) No. 2:19-cv-01410-JCC-MAT
)
 vs.) DEFENDANTS' MOTION TO
) RECONSIDER TRIAL DATE
 ELEANOR BROGGI, et al,)
) *Noted for March 25, 2021*
 Defendants.)
 _____)

I. IDENTITY OF PARTY AND RELIEF REQUESTED

Defendants King County and Dets. Eleanor Broggi and Matthew Olmstead request that this Court reconsider the Minute Order setting a new trial date in this matter for October 25, 2021. One of the defendants, Det. Eleanor Broggi, will be out of the country from November 1, 2021 to November 21, 2021, and would be unable to be present during the trial with the current date. The defendants request the trial date be moved four weeks to November 22, 2021.

II. FACTS RELEVANT TO MOTION TO RECONSIDER

This trial was scheduled for May 24, 2021. Declaration of Carla Carlstrom, ¶ 2. Due to Covid 19 and the closure of the courts, this Court notified the parties on March 19, 2021 that the Court will not be holding in-person jury trials until at least July and asked the parties to submit a

1 proposed new trial date. Decl. of Carlstrom, ¶ 3. After conferring, the parties submitted a proposed
 2 trial date of September 27, 2021. Decl. of Carlstrom, ¶ 5. On March 25, 2021, this Court issued
 3 a Minute Order setting the trial date for October 25, 2021 and alerting the parties that October 25,
 4 2021 was the earliest date available due to the backlog of cases due to Covid 19. Decl. of
 5 Carlstrom, ¶ 6.

6 Det. Broggi, a defendant to this lawsuit, will be out of the country from November 1, 2021
 7 to November 21, 2021. Decl. of Carlstrom, ¶ 7. Counsel have been aware of Det. Broggi's
 8 vacation since mid-March. Decl. of Carlstrom, ¶ 7. Det. Broggi recently retired from the Sheriff's
 9 Office. Decl. of Carlstrom, ¶ 7. Her trip has already been paid for. Decl. of Carlstrom, ¶ 7. Det.
 10 Broggi wishes to be present in the courtroom during the trial as she is a named defendant. Decl.
 11 of Carlstrom, ¶ 7. Det. Broggi is also a material witness in the case. Decl. of Carlstrom, ¶ 7.

12 In choosing September 27, 2021 as the proposed trial date the parties were attempting to
 13 account for Det. Broggi's planned trip. Counsel for Defendants have conferred with Plaintiff's
 14 counsel, but they are unwilling to join Defendants' request for a new trial date. Decl. of Carlstrom,
 15 ¶ 8. Defendants seek a trial date of November 22, 2021 to accommodate Det. Broggi's trip. Decl.
 16 of Carlstrom, ¶ 9.

17 **III. LEGAL ARGUMENTS**

18 The decision to grant or deny a requested continuance is within the discretion of the trial
 19 court and will not be disturbed on appeal absent a clear abuse of discretion. *U.S. v. Hayes*, 573
 20 F.2d 1111, 1114 (9th Cir. 1978). *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir. 1985) sets
 21 forth four factors relevant in reviewing a denial of a continuance for abuse of discretion: (1) the
 22 requester's diligence in preparing for trial; (2) the likely utility of the continuance, if granted; (3)
 23

1 the inconvenience to the court and the other side; and (4) prejudice from the denial. *U.S. v. Pope*,
 2 841 F.2d 954, 956 (9th Cir. 1988).

3 In the present case, all factors weigh in favor of this Court granting Defendants' request
 4 for a continuance. The necessity of changing the trial date arose due to Covid-19, not the actions
 5 of either party. The need is unrelated to trial readiness but is due to safety protocols necessitated
 6 by the pandemic. Defendants are promptly advising this Court of the conflict. A four-week
 7 continuance will not cause inconvenience or prejudice to the plaintiff.

8 Det. Broggi has a right to be present during the trial as she has been sued by Plaintiff. Her
 9 testimony is also central to the case. Her absence will negatively affect the defense of this lawsuit.

10 IV. CONCLUSION

11 Defendants respectfully ask this Court to reconsider the trial set of October 25, 2021, and
 12 instead set the trial for November 22, 2021, when Det. Broggi is back in the country.

13 RESPECTFULLY SUBMITTED this 25th day of March, 2021.

14 DANIEL T. SATTERBERG
 15 King County Prosecuting Attorney

16 s/ Carla B. Carlstrom
 17 ANN M. SUMMERS, WSBA #21509
 18 CARLA B. CARLSTROM, WSBA #27521
 19 Senior Deputy Prosecuting Attorneys
 20 500 Fourth Avenue, Suite 900
 21 Seattle, Washington 98104
 22 Telephone: 206-296-8820
 23 Attorneys for King County Defendants
ann.summers@kingcounty.gov
allyson.zerba@kingcounty.gov
Carla.Carlstrom@kingcounty.gov


CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 25, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF E-filing System which will send notification of such filing to the following CM/ECF participants:

Tiffany M. Cartwright
Timothy K. Ford
Rebecca Talbott
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104
tiffanyc@MHB.com
TimF@MHB.com
RebeccaT@mhb.com
Attorneys for Plaintiff

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 25th day of March, 2021.


JENNIFER REVAK
Legal Secretary
King County Prosecuting Attorney's Office